DEPARTMENT OF STATE REVENUE

02-20050517.LOF

Letter of Findings Number: 05-0517
Adjusted Gross Income Tax
For Tax Years 2001-02

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ISSUE

I. Adjusted Gross Income Tax–Combined Return
Authority: IC § 6-8.1-5-1
  Taxpayer protests the assessment of corporate income tax.
II. Tax Administration–Negligence Penalty
Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2
  Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

  Taxpayer is a group of related companies doing business in Indiana and nationwide. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer should be filing a combined return and, under the combined return, had adjusted gross income tax liabilities and issued assessments for the tax years 2001 and 2002. Taxpayer protests these assessments. An administrative hearing was scheduled and Taxpayer failed to attend. Further facts will be provided as required.

I. Adjusted Gross Income Tax–Combined Return

DISCUSSION

  Taxpayer protests several items in the audit. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the assessment is made, under IC § 6-8.1-5-1(b). First, Taxpayer protests that the Department incorrectly stated that one of the companies included in the combined return was a non-filer in Indiana, but that the company in question did file an Indiana return. After review, the Department has determined that Taxpayer is correct. The company in question did file returns with Indiana.

  Second, Taxpayer states that the Department did not include net operating losses from two of the companies included in the combined return. Taxpayer also states that the Department failed to address how various types of net operating losses (separate and combined) should be applied to future income years since Indiana allows losses to be carried forward twenty years. Taxpayer failed to include any reference to or analysis of any statute, regulation or court case in its discussion of net operating losses. Taxpayer also failed to include any documentation to suggest, let alone establish, that there are any net operating losses to take into account. Taxpayer has failed to meet the burden of proof established by IC § 6-8.1-5-1(b).

  Third, Taxpayer states that the Department failed to address the Federal Revenue Agent Report (RAR) covering tax years ended June 1996, June 1997, June 1998, and June 1999. Taxpayer failed to include this report with this protest. Taxpayer also failed to provide any analysis explaining what, if any, impact this report would have on the tax years 2001 and 2002. Taxpayer has failed to meet the burden of proof established by IC § 6-8.1-5-1(b).

  Fourth, Taxpayer states that there were six inaccurate numbers in the audit report. Taxpayer provided specific information concerning the alleged inaccuracies along with what it believes are accurate numbers. After review, the Department has concluded that Taxpayer is correct in these six instances. The Department will conduct a supplemental audit to correct these six items.

  In conclusion, Taxpayer is correct that one of the companies which the Department reported as a non-filer actually did file returns with Indiana. Taxpayer has failed to meet its burden concerning net operating losses. Taxpayer has failed to meet its burden concerning the federal RAR for prior tax years. Taxpayer is correct that the six instances concerning inaccurate numbers should be corrected.

FINDING

  Taxpayer's protest is sustained in part and denied in part.

II. Tax Administration–Penalty

DISCUSSION

  The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

  The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

  If a person:

  . . .

  (3) incurs, upon examination by the department, a deficiency that is due to negligence;

  . . .

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that its failure to pay the deficiency was not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

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